

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
FILED 09 JUL 31 1359 USDC-ORE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ATLANTIC NATIONAL TRUST, LLC,  
a Florida limited liability  
company,

O R D E R  
Civ. No. 09-6054-TC  
(Related case CV 09-6049-TC)

Plaintiff,

vs.

MT. HAWLEY INSURANCE COMPANY, a  
Delaware corporation, CRUMP  
INSURANCE SERVICES, INC., a  
Texas corporation, CHAMBERLAIN  
INSURANCE AGENCY LLC, an Oregon  
limited liability company,  
LEBANON HARDBOARD LLC, an  
Oregon limited liability  
company, and TRITALENT FUNDING  
GROUP, LLC, an Oregon limited  
liability company,

Defendants.

---

AIKEN, Judge:

Magistrate Judge Coffin filed his Findings and  
Recommendation on May 21, 2009. The matter is now before me  
pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).  
When a party objects to any portion of the Magistrate's Findings  
and Recommendation, the district court must make a de novo  
determination of that portion of the Magistrate's report. 28  
U.S.C. § 636(b)(1)(B); McDonnell Douglas Corp. v. Commodore

1       Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert.  
2       denied, 455 U.S. 920 (1982).

3       Defendant Mt. Hawley Insurance Company has timely filed  
4       objections. I have, therefore, given the file of this case a de  
5       novo review. First, I agree that there were no "findings of fact"  
6       made as to the following issues (I also note that no party  
7       contends otherwise): (1) the amount of the alleged damages caused  
8       by the fire; and (2) defendant Tritalent's alleged mortgage  
9       holder status in the property at bar. See Findings and  
10      Recommendation, p. 2. Next, there can be no dispute that 28  
11      U.S.C. § 1448 protects a later served defendant, when within the  
12      30-day period, that defendant opts to exercise its right to  
13      choose the state court forum. When there are multiple  
14      defendants, as here, all defendants must either join in the  
15      motion to remove to federal court, or take no action against the  
16      motion. Pursuant to § 1448, a nonserved defendant (like Lebanon  
17      Hardboard or Tritalent Funding Group here) may force a remand to  
18      state court if either or both defendants choose the state forum  
19      over the federal forum by making a timely motion to remand after  
20      such defendant has been served with the complaint. That is  
21      exactly the situation at bar. Therefore, remand to state court  
22      is appropriate because after having been served with the  
23      complaint, defendants have timely exercised their right to choose  
24      the state court forum. Finally, defendant Mt. Hawley's request  
25      for oral argument is denied as unnecessary.

26      In conclusion, I ADOPT the Magistrate's Findings and  
27      Recommendation (doc. 27) that defendants Lebanon Hardboard's and  
28      Tritalent Funding Group's motion to remand (doc. 8) and

1 plaintiff's motion to remand (doc. 16) are granted. This case is  
2 remanded to state court.

3 IT IS SO ORDERED.

4 Dated this 29 day of July 2009.

5  
6  
7   
8 \_\_\_\_\_  
9 Ann Aiken  
United States District Judge